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No. 84-309

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

CANTON TEXTILE MILLS, INC.,
and GULF INSURANCE COMPANY,
Petitioners

v.

TURNER LATHEM,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the Supreme Court of Georgia

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36pp

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To the Supreme Court of Georgia

Petitioners, CANTON TEXTILE MILLS, INC., and GULF INSURANCE COMPANY (hereinafter "Employer-Insurer") respectfully pray that a Writ of Certiorari issue to review the judgment and decision of the Supreme Court of Georgia, entered on June 12, 1984, holding that a state may deprive employers of a vested statute of limitations defense to a Workers' Compensation claim. The decision and judgment became final for the purpose of review by this Court on July 2, 1984, when the Employer-Insurer's timely Motion for Rehearing was denied. Since the constitutionality of a Georgia statute is challenged herein, 28 U.S.C. § 2403(b) may be applicable.

OPINIONS BELOW

The opinion of the Administrative Law Judge has not, and will not be, reported and is attached as Appendix A hereto. The opinion of the Superior Court of Cherokee County has not, and will not be, reported and is attached as Appendix B hereto. The opinion of the Supreme Court of Georgia, and that Court's Order denying the Employer-Insurer's Motion for Rehearing, are not as yet reported. They are attached as Appendix C and D hereto.

JURISDICTION

The opinion of the Supreme Court of Georgia was rendered on June 12, 1984 and became final, for the purposes of review by this Court, when the Supreme Court of Georgia denied the Employer-Insurer's Motion for Rehearing on July 2, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3).

QUESTION PRESENTED

Whether legislation that strips away a vested statute of limitations defense, thereby giving viability to stale Workers' Compensation claims, is unconstitutional as an impairment of contract and as a violation of the equal protection of the laws.

CONSTITUTIONAL PROVISIONS INVOLVED

Two constitutional provisions are involved in this case. The first appears in Article I, Section 10, Clause 1 of the Constitution of the United States

which reads: "No state shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts . . ." The second is the Fourteenth Amendment to the United States Constitution which states in Section 1: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Respondent is a former employee of Canton Textile Mills, Inc., Petitioner herein, who ceased employment on April 2, 1976. During Respondent's years at Canton Textile Mills, he worked in the cardroom and was exposed to cotton dust. In the early 1960's, Respondent began experiencing the lung difficulties for which he was first hospitalized in 1972 and which led to his retirement. As early as 1972, Respondent believed that his lung condition was caused by his employment at the mill, but he declined to file a Workers' Compensation claim, receiving Social Security disability benefits instead. (Claimant's deposition pp. 13, 21) An April, 1977 article in "Labor Unity" featured Respondent and his allegations of a byssinosis disability. (See Claimants Exhibit 3.) When Respondent retired in 1976, Georgia Law provided for Workers' Compensation benefits for employees with statutorily defined "occupational diseases," provided the claim was filed within one year of the date of injury (Ga. Code Ann. §§ 114-803(5), 801). The Canton Textile Mills plant closed in April of 1981.

In 1982, the Georgia General Assembly altered the Workers' Compensation Act, allowing claims of disability due to byssinosis, a pulmonary disease, diag-

nosed anytime before July 1, 1983, to be filed anytime prior to July 1, 1984 (O.C.G.A. § 34-9-281(d)).

On October 1, 1982, Respondent filed a claim with the Georgia State Board of Workers' Compensation, alleging a byssinosis disability dating from April 2, 1976. The Employer-Insurer moved to dismiss the claim on several grounds, specifically alleging that the 1982 legislation was unconstitutional as an impairment of contract and a retroactive interference with vested substantive rights. The Administrative Law Judge issued an Award in favor of Respondent, declining to rule on the constitutional issues.

Appeal of the Award was made to the Superior Court of Cherokee County. Under an Order dated November 19, 1983, Judge Richard Neville affirmed the Award and held the 1982 amendment constitutional.

The Supreme Court of Georgia, by a five to two vote, affirmed the judgment of the Superior Court by overruling over forty years of precedent holding that the legislature is forbidden from passing laws reviving actions already barred by a statute of limitations (Opinion of Supreme Court of Georgia, p. 4). A Motion for Rehearing was timely filed and subsequently denied, although the vote on this decision was four to three.

STAGE OF PROCEEDINGS AT WHICH THE CONSTITUTIONAL ISSUE WAS RAISED

The constitutional issues involved herein were first raised before the Administrative Law Judge by motion and brief, and were thereafter raised and ar-

gued before both the Superior Court of Cherokee County and the Supreme Court of Georgia.

REASONS FOR GRANTING THE WRIT

I. The decision of the Supreme Court of Georgia upholding the retroactive creation of stale Workers' Compensation claims violates the constitutional protection against the impairment of contracts as delineated by this Court in Allied Structural Steel Co. v. Spannaus, 438 U.S. 234 (1978).

There can be no doubt that the 1982 amendment to the Georgia's Workers' Compensation Act works a total impairment of the Workers' Compensation contract existing between the State, the employer, and the employee. The statute (codified at O.C.G.A. § 34-9-281(b), Georgia Laws 1982, p. 2485, paragraphs 3, 9) creates a new occupational disease claim with a statute of limitations period extending back in time thirty-seven years, to the passage of the Occupational Disease section of Georgia's Workers' Compensation Act. Although, as this Court has recently noted, total destruction of contractual expectations is not necessary for a finding of substantial impairment, *Energy Reserves Group v. Kansas Power and Light*, 459 U.S. 400, 411 (1983) (citing *United States Trust Co. v. New Jersey*, 431 U.S. 1, 26-27 (1977)), total destruction has in fact occurred here. The Employer-Insurer could not expect to be forced to defend against an alleged work-related injury years after the limitation period had run. To implement legislation that forces just such an impossible defense totally impairs the expectations be-

tween the parties to the Worker's Compensation Contract.

The nature of Georgia's Workers' Compensation Law is ex contractu between the employee, the employer and the State. *Gay v. Green*, 91 Ga. App. 78, 84 S.E.2d 847 (1954). Strict scrutiny must be applied where, as here, a statute operates to alter the obligations and expectations of a contract to which the State is a party. *Allied Structural Steel*, 438 U.S. at 244; *United States Trust Co.*, 431 U.S. at 22-23. An analysis of the 1982 amendment reveals that neither the asserted public interest behind the statute nor its means of achieving those ends are reasonable.

The only benefits conferred by the altering statute go to a particular labor group, namely textile mill workers, for the purpose of granting them a viable claim for injuries alleged to have occurred nearly forty years ago. Any evidence concerning the claim is now too dated to be probative, if indeed it exists at all. The statute does nothing to provide for a reasonable and fair forum to determine past injuries but rather grants a new life to claims whose time to be properly heard is past. Since relief was available under prior Workers' Compensation Law to any textile worker desiring recovery for a byssinosis claim, the statute does nothing but force employers to defend against stale claims.

The point is exemplified by this case. Respondent has known of his injury for over ten years, and suspected it to be work-related long before his retirement. The memories of the witnesses have certainly faded in the years Respondent has waited to file his claim. In fact, two key witnesses, Respondent's supervisors, have

died. The plant itself has shut down. The Employer-Insurer is prevented by this delayed claim from investigating the facts to discover whether proper notice of the injury was given, and from examining Respondent in a timely fashion to discover if disability did in fact exist. The claims allowed by the retroactive legislation are heavily favored on the side of those claiming a distant byssinosis disability. The only purpose served by such legislation is the mollification of labor interests at the expense of employers who have complied with the law.

The unreasonableness of the statute's purpose is magnified by the ends it utilizes. The creation of a new statute of limitations to reawaken dead claims arbitrarily grants a new right to textile employees by seizing and destroying the employer's vested defense. The majority position in the courts of the United States has long been that after a cause of action has become barred, the statute of limitations defense is a vested right that cannot be taken away by legislation. *See Merchant's Mutual Insurance Fund v. South Carolina Second Injury Fund*, 291 S.E.2d 666 (S.C. 1982); *Tyson v. Johns-Manville Sales Corp.*, 399 So.2d 263, 269 (Ala. 1981); *Dobson v. Quinn Freight Lines*, 415 A.2d 814 (Me. 1980); *Arnold Engineering, Inc. v. Industrial Commission*, 72 Ill.2d 151, 380 N.E.2d 782 (1978); *Barksdale v. H. O. Engen, Inc.*, 218 Va. 496, 237 S.E.2d 794 (1977); 51 Am. Jur. 2d *Limitations of Actions*, Section 44 (1970); Larson, *The Law of Workmens' Compensation*, Section 78.85 at 15-414; Hockman, "The Supreme Court and the Constitutionality of Retroactive Legislation", 73 Harv. L. Rev. 692, 696 (1960).

Indeed, in this case the Georgia Supreme Court was forced to overrule its own longstanding precedent created in *Bussey v. Bishop*, 169 Ga. 251, 150 S.E. 78 (1929) to hold that a vested statute of limitations defense may be abrogated. The court was at further pains to distinguish its recent holding in *Hart v. Owens-Illinois, Inc.*, 250 Ga. 397, 297 S.E.2d 462 (1982) that statutes of limitation cannot apply retroactively to upset the vested rights of claimants to apply for benefits. Apparently, however, the vested rights of employers do not merit such protection since they are now forced to litigate claims long since barred by the statute of limitations. Such a taking of the employer's vested defense clearly opens the door for the Georgia Legislature to retroactively alter or even revoke any statute of limitations defense in a nonrealty action whenever it becomes politically popular to do so. In such a framework, statutes of limitation lose their meaning entirely. However appealing such an open-ended statute of limitations may be to the labor constituency, it is patently unfair to employers and is completely unreasonable for the purpose of rectifying alleged injuries.

It must be emphasized that employees are not and never have been without remedy for a byssinosis disability or any other occupational disease. The Occupational Disease section of Georgia's Workers' Compensation Act provided a claim for Respondent in 1976 that he chose to ignore. Respondent's available remedy is underscored by the Administrative Law Judge's findings of fact that quote verbatim the provisions of the Occupational Disease Act, making clear that Respondent had a proper claim in 1976. While the Employer-Insurer had a defense to that claim in 1976,

namely that Respondent's lung disorders were not work-related, that defense is now gone along with the evidence that has dissipated through the years. The decision of the Georgia Supreme Court upholding the retroactive legislation thereby not only destroys the Employer's statute of limitations defense, it voids *any* defense available to the Employer at the time of the alleged disability. This statute does not supply a remedy where none existed—it simply imposes liability where it cannot be defended.

The pro-labor act of the Georgia General Assembly breathing life into byssinosis claims that cannot fairly be defended serves no legitimate interest and is unreasonable. Just as the statute in question in *Allied Structural Steel Co. v. Spannaus, supra*, nullified the express terms of the employer's pension plan, the statute sub judice voids the express terms of the Workers' Compensation scheme to which the state itself is a party. Nor can the law be saved as a justifiable protection of a broad social interest, as this Court found in *Home Building & Loan Assoc. v. Blaisdell*, 290 U.S. 398 (1934), since the law in question is narrowly aimed at a specific employer, namely the textile industry. All that the retroactive amendment accomplishes is the imposition of a new liability on employers who have little chance of defending against fabricated claims.

As the Court has stated: "The severity of the impairment measures the height of the hurdle the legislation must clear." *Allied Structural Steel Co.*, 438 U.S. at 245. As noted above, the effect of this impairment is total and the political purposes for which the legislation was drafted cannot support such a retroactive law under the scrutiny of constitutional standards.

II. The retroactive legislation constitutes a violation of the equal protection of the laws since it treats a specific class of employers and employees differently with no reasonable basis for the distinction.

The revival of byssinosis claims denies textile employers of the equal protection of the law since they are opened to liability for an occupational disease peculiar to their industry. Other employers who are similarly situated are not, however, similarly penalized for the occupational diseases that are peculiar to their industry. It is likewise a denial of equal protection to deny other employees of other industries the right to go back thirty-seven years and advance a claim against their particular employer for some other occupational disease. There is no articulable or reasonable explanation for this distinction.

It is axiomatic that states need only have a "rational basis" for passing economic legislation that has a disparate treatment. *Minnesota v. Cloverleaf Creamery Co.*, 449 U.S. 456 (1980); *Vance v. Bradley*, 440 U.S. 93 (1979). Nevertheless, the powers of state legislatures are not without boundary. No rational purpose can be served by legislation that singles out one class of employees to be benefited, and one class of employers to be shackled with open-ended liability. No such legislation, for example, has been passed extending open-ended liability for those industries where employees are exposed to asbestos. Such employees have the same remedy available to them that Respondent had available to him in 1976: that of proceeding under the Occupational Disease Section of Georgia's Work-

ers' Compensation Act. Anyone employed in a textile industry over the last several decades, however, may now bring an action against their employer, or former employer, and allege an exposure to dust causing byssinosis disability.

There can be no rational distinction in stripping away the vested statute of limitations defense from the employers of one industry. To do so places an unjustifiable burden on the employers of the penalized industry. Since no justifiable basis for such disparate treatment exists to support the legislation, it must be held unconstitutional as a violation of the equal protection of the laws.

CONCLUSION

For the foregoing reasons, Petitioners respectfully pray that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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Atlanta, GA 30357

APPENDIX A

STATE BOARD OF WORKERS' COMPENSATION

1000 South Omni International
Tenth Floor
ATLANTA, GEORGIA 30335

NOTICE OF AWARD

CLAIM NO.	257-07-2458	CASE OF	Turner Lathem
INJURY DATE	April 2, 1976	DATE	April 18, 1983

Turner Lathem
Employee

Canton Textile Mills, Inc.
Employer

Gulf Insurance Co.
Insurer

H. Clifton Conrad, Jr.
Counsel for Claimant

Charles L. Drew
Counsel for Defendants

The above stated claim came on for hearing before the undersigned in Atlanta, Georgia on March 4, 1983 to determine all proper issues.

FINDINGS OF FACT

Based on all the evidence adduced before me at the hearing and the exhibits, I find in fact:

Claimant was in the general employ of Canton Textile Mills in Cherokee County, Georgia on or about April 2, 1976 at an average weekly wage of $160. He

had been employed by Canton Textile Mills for over 30 years. Venue is in Cherokee County. Jurisdiction is proper. The parties are subject to the Act. Legal notice of claimant's lung disablement was given on or about April 2, 1976. Coverage is with Gulf Insurance Co.

The defendants moved to dismiss this claim because they contend that Code §34-9-281 (d) (Acts 1982, p. 2485, §3, 9) is unconstitutional for stated reasons. The Board does not have jurisdiction to rule on the constitutional questions raised and must decide this claim as though the statute were constitutional.

The defendants also moved to dismiss this claim because byssinosis was not recognized or defined as an occupational disease under the provisions of Code §114-803 at the time of claimant's disablement on April 2, 1976. There is no merit to this contention since Code §34-9-281 (d) provides for the filing of this claim for disability diagnosed as byssinosis prior to July 1, 1983.

It is common knowledge that byssinosis is a form of pneumoconiosis due to inhalation of cotton dust.

An affidavit attached to claimant's brief is not evidence and will not be considered by the undersigned.

Claimant is 64 years of age. On April 2, 1976 he last worked for the employer and was last exposed to cotton dust.

Claimant was found to be totally disabled by Dr. Keith M. Parmer and was diagnosed as having severe chronic obstructive pulmonary disease, hypothroidism,

internal hemorrhoids and essential hypertension. Pulmonary function studies revealed severe chronic lung disease with 21% of the predicted value for age, weight, height, etc. He had 50% of forced vital capacity out of 100% and force expiratory volume was severely decreased. Claimant has been receiving social security benefits. He has been unable to work and has been totally economically disabled since April 2, 1976.

Claimant is presently under the care of Dr. David E. Field and Dr. Ralph Haynes for his lung condition.

Claimant has not smoked since he was in his teen years. None of his family has had breathing problems.

Claimant started work for the defendant doing card tending. Then he went to card fixing and grinding where he worked in cotton dust for about 30 years. When the cotton was carded, cotton dust would pour out of the machine. Claimant began having lung problems in the 1960's which had developed during his employment with defendant. He would cough, sneeze, wheeze, choke up and have a build-up of mucus. He had difficulty breathing and could not get his breath out. His lungs would feel blown up like a balloon. OSHA in the early 1970's required that masks be made available for the employees. Because claimant could not breath through the masks, he did not wear them except when going through a real dusty area.

The defendants moved to dismiss this claim because at the time of disablement in 1976, the claim would have been determined under Code §114-803, 5 (a) through (e) and no claim was timely perfected within one year of claimant's disablement.

On November 11, 1982 claimant was first diagnosed as having probable byssinosis by Dr. Ralph L. Hayes, M.D., FACP, a doctor certified as a pulmonary specialist by the American Board of Internal Medicine. Claimant filed a claim for compensation on October 1, 1982 within one year of the date he was first diagnosed as having byssinosis and prior to July 1, 1984. The claim will not be dismissed because it was not filed within one year of claimant's disablement. Code §34-9-82 (Code §114-305) and Code §34-9-391 (d).

Dr. Michael Duffell, a pulmonary specialist certified by the Board of Internal Medicine, found that claimant's current pulmonary impairment is related to his occupational exposure but was unable to extract a symptom complex that would warrant a diagnosis of byssinosis.

Dr. Robert T. Sessions, certified by the American Board of Surgery, and who practices cardiovascular and thoracic surgery did not diagnose claimant has (sic) having byssinosis.

All other medical evidence has been considered.

I find that claimant has byssinosis caused by breathing cotton dust for over 30 years while in the general employ of the defendant, that there is a direct causal connection between the conditions under which the work was performed and the disease, that the disease followed as a natural incident of exposure by reason of the employment, that the disease is not an ordinary disease of life to which the general public is exposed and that the disease appears to have its origin in a risk connected with claimant's employment and to

have flowed from that source as a natural consequence. Claimant's lung condition therefore arose out of and in the course of his employment with Canton Textile Mills.

AWARD

WHEREFORE, based on the above and foregoing findings of fact and the conclusions of law applicable thereto, Canton Textile Mills, employer, and Gulf Insurance Co., insurer, are directed to pay Turner Lathem the sum of $95 per week from April 2, 1976 until altered or terminated by law.

The defendant is further directed to pay all medical expenses and to furnish to or on behalf of the claimant all such medical, surgical, hospital, or other treatment as may be reasonably required to effect a cure or give relief to the claimant's injury-resultant condition which the parties agree are reasonable in amount and reasonably required to effect a cure or give relief subject to hearing on request of any party to resolve any dispute. The provisions of this paragraph are interlocutory in nature.

AND IT IS SO ORDERED, this the 18th day of April 1983.

STATE BOARD OF WORKERS' COMPENSATION

/s/ EFFIE A. MAHAN
Effie A. Mahan
Administrative Law Judge

EAM:jld

STATE BOARD OF WORKERS' COMPENSATION

1000 South Omni International
Tenth Floor
ATLANTA, GEORGIA 30335

NOTICE OF AWARD

CLAIM NO. 257-07-2458 CASE OF . Turner Lathem
INJURY DATE April 2, 1976 DATE April 18, 1983

Turner Lathem
Employee

Canton Textile Mills, Inc.
Employer

Gulf Insurance Co.
Insurer

Conrad & Abernathy
Counsel for Claimant

Charles L. Drew
Counsel for Defendants

The attorney for the claimant has submitted a fee contract for approval. A fee of 33⅓ % of the recovery, applicable only to income benefits for 400 weeks, unless sooner terminated is reasonable and fair. The recovery subject to attorney's fees is $95.00 per week, commencing April 2, 1976 continuing until altered or terminated by law.

AWARD

The claimant is directed to pay the attorney 33⅓% of any income benefits received to date for the period shown above.

The employer/insurer are directed to pay claimant's attorney 33⅓% of any income benefits due or hereafter becoming due for the period shown above.

The attorney's fee applies only to 400 weekly benefits, unless sooner terminated. Medical expenses are not subject to attorney's fees.

Jurisdiction over this award shall remain with the board and this award may be subject to review and amendment at any time upon motion of the board or any interested party.

IT IS SO ORDERED, this the 18th day of April, 1983.

STATE BOARD OF WORKERS' COMPENSATION

/s/ Effie A. Mahan
Effie A. Mahan
Administrative Law Judge

EAM:jld

APPENDIX B

THE SUPERIOR COURT OF CHEROKEE COUNTY

STATE OF GEORGIA

TURNER LATHEM, Claimant, vs. CANTON TEXTILE MILLS, INC., Employer, and GULF INSURANCE CO., Insurer.	*	CASE NO. 83-3015

ORDER

(AFFIRMING AWARD OF ADMINISTRATIVE LAW JUDGE)

This Workers' Compensation claim was appealed to this Court by the Employer-Insurer directly from the initial ruling of the Administrative Law Judge.

Accordingly, this Court has carefully and thoroughly reviewed the record herein and has considered all grounds urged by the Employer-Insurer. Pursuant to *O.C.G.A.* §34-9-105(c), the Court is unable to find any ground on which to set aside the award of the Administrative Law Judge. Further, although the Employer-Insurer's arguments urging this Court to strike down *O.C.G.A.* §34-9-281(d) (1983) as unconstitutional were vigorously and zealously presented, the Court is unable to so hold.

THEREFORE, the Administrative Law Judge's award, in its entirety, is AFFIRMED.

This 17 day of November, 1983.

/s/ RICHARD NEVILLE
RICHARD NEVILLE, JUDGE,
CHEROKEE SUPERIOR COURT

Original: Clerk of Court
ccs: H. Clifton Conrad, Jr.
Mr. Charles L. Drew
Mr. Karl Duff

APPENDIX C

IN THE SUPREME COURT OF GEORGIA

TURNER LATHEM, Claimant, vs. CANTON TEXTILE MILLS, INC., Employer, GREGORY, Justice.	* * * * * * * * * *	CASE NO. 40756 Decided: June 12, 1984

This is a workers' compensation case. The facts are not in dispute. Turner Lathem worked for Canton Textile Mills, Inc. for over thirty (30) years in the card room of its textile mill. Throughout his employment at the mill, appellee was exposed to cotton dust. During the early seventies Lathem developed a lung disorder which eventually led to his terminating his employment on April 2, 1976. Appellee has not worked since that date nor did he file a claim for worker's compensation benefits at the time.

In 1982 the General Assembly amended the Workers' Compensation Act by designating byssinosis as an occupational disease. Ga. Laws 1982, p. 2485, §§ 4, 5, 8. "Byssinosis" means a pulmonary disease due to exposure to cotton dust for a period of seven years or longer and diagnosed as such by a doctor certified as a pulmonary specialist by the American Board of Internal Medicine. OCGA § 34-9-280(5). The Act was further amended by adding at the end of OCGA § 34-9-281 a new subsection (d) which provides "In cases of

disability or death resulting from byssinosis . . . the time for filing claims shall be as provided by this chapter; *provided, however, that, with respect to cases of disability diagnosed as byssinosis prior to July 1, 1983, such claims shall be filed prior to July 1, 1984.*" Ga. Laws 1982, p. 2485 §§ 3, 9. (Emphasis supplied.)

In November, 1982, appellee's condition was diagnosed for the first time by a certified pulmonary specialist as byssinosis caused by his exposure to cotton dust while employed by appellant. Pursuant to OCGA § 34-9-281(d), appellee filed a claim for workers' compensation benefits. At the hearing, appellant moved to dismiss appellee's claim on the ground at the time of disablement in 1976, the claim could have been asserted as an occupational disease under OCGA § 34-9-280(3)(E)[1] therefore, this action is barred by the one year limitations period in effect at the time. OCGA

---

[1] OCGA § 34-9-280(3)(A) through (D) defines the term "occupational disease" and specifically lists several which are compensable. Subsection (E) is the so called "catch-all" provision which provides compensation for "other occupational diseases" provided a claimant proves to the satisfaction of the board all of the following:

"(i) A direct causal connection between the conditions under which the work is performed and the disease;

(ii) That the disease followed as a natural incident of exposure by reason of the employment;

(iii) That the disease is not of a character to which the employee may have had substantial exposure outside of the employment;

(iv) That the disease is not an ordinary disease of life to which the general public is exposed;

(v) That the disease must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence."

§ 34-9-82. The Administrative Law Judge denied the motion and awarded appellee benefits. On appeal, the superior court rejected appellant's constitutional challenge to OCGA § 34-9-281(d). We granted appellant's application for discretionary appeal to address the constitutional question raised. We affirm.

1. Appellant contends OCGA § 34-9-281(d) is unconstitutional and void in that said proviso violates the Georgia Constitution, Art. I, Sec. I, Para. X, which provides "No bill of attainder, ex post facto law, retroactive law, or laws impairing the obligation of contract or making irrevocable grant of special privileges or immunities shall be passed." Specifically, appellants argue the statute is a retroactive law which creates a new obligation and imposes a new duty with respect to transactions or considerations already past. Appellants contend they had a vested defense in the one year limitation period which the legislature cannot constitutionally extend by subsequent legislation. We disagree.

The general rule is that laws prescribe only for the future, and usually will not be given retrospective operation. They will be given a retrospective operation, however, when the language imperatively requires it, or when an examination of the act as a whole leads to the conclusion that such was the legislative purpose. It is at least and always a question of legislative intent. *Barnett v. D. O. Martin Co.*, 191 Ga. 11, 12 (11 SE2d 210) (1940). The legislative intent in the case sub judice is clear. By its express language OCGA § 34-9-281(d) is applicable to all cases of disability diagnosed as byssinosis prior to July 1, 1983. There can be no doubt the legislature intended the section be given retrospective operation. However, our inquiry does not

cease for once the legislative intent is found we must determine whether giving the statute retrospective operation would violate our constitutional provision against retroactive laws.

A statute of limitations is remedial in nature. *Jaro, Inc. v. Shields*, 123 Ga. App. 391, 392 (181 SE2d 110) (1971). Laws which act upon remedies alone, although retroactive, will be enforced, provided they do not impair the obligation of contracts or disturb absolutely vested rights, and only go to confirm rights already existing, and in furtherance of the remedy, by curing defects and adding to the means of enforcing existing obligations. *Seaboard A.L. Ry. v. Benton*, 175 Ga. 491 (165 SE 593) (1932). Appellants contend they had an absolutely vested right in the one year statute of limitations. In *Bussey v. Bishop*, 169 Ga. 251 (150 SE 78) (1929) this court held, with respect to the Workers' Compensation Act, that the legislature cannot revive a right of action which is barred by the statute of limitations in existence prior to the passage of the reviving act, for to do so would violate our constitutional provisions against the passage of retroactive laws. In so holding, this court adopted the reasoning of the dissent in the U. S. Supreme Court case of Campbell v. Holt, 115 U. S. 620 (6 SC 209, 29 LEd. 483) (1885) that a statute of limitation, once it has run, becomes vested and is as valuable to the one party as the right to demand or prosecute the suit is to the other. We said the right to this defense should be held as inviolate as the right of action, therefore subsequent legislation cannot constitutionally change the limitations period. The majority in Campbell, supra, made a distinction between a statutory bar operating to invest persons with title to property and a bar which consti-

tutes merely a defense to a personal demand. The court went on to hold that in actions on contract, or in any class of actions in which a party does not become invested with title to property by the statute of limitations, the legislature may by repealing the statute, even after the right of action is barred, restore the remedy and divest the other party of the statutory bar.

Our holding in *Bussey*, supra, was criticized, if not impliedly overruled, in *Bullard v. Holman*, 184 Ga. 788 (193 SE 586) (1937) where we held a party has no vested right in a defense based upon a mere informality not affecting his substantial equities. In that case the legislature passed an act expressly validating contracts entered into with corporations not registered in accordance with laws in force at the time. Prior to the act such contracts were not enforceable in our courts. In holding the act applied retrospectively to contracts entered into prior to its passage, this court criticized *Bussey* in several respects, the most persuasive of which being the *Bussey* court, in Division 1 of the opinion, decided the legislature did not *intend* the act under consideration be given retrospective operation. This ruling decided the question and anything that might have been added as to the validity of the act, if it had been given a retroactive effect, was necessarily obiter dictum. See also *Walker Electric Co. v. Walton*, 203 Ga. 246 (46 SE2d 184) (1948). We now expressly overrule our holding in *Bussey v. Bishop*, supra, and adopt the reasoning of the majority of the court in Campbell v. Holt,[2] supra. We agree with the view ex-

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[2] While we recognize Campbell v. Holt, supra, involved a due process attack on the statute in question, it was grounded on the single proposition that the law was retroactive.

pressed by Justice Jackson in Chase Securities Corp. v. Donaldson, 325 U.S. 304 (65 SC 1137, 89 LEd. 2006) (1945) that, "Statutes of limitation find their justification in necessity and convenience rather than in logic. They represent expedients, rather than principles. They are practical and pragmatic devices to spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost [cits.]. They are by definition arbitrary, and their operation does not discriminate between the just and the unjust claim, or the voidable and unavoidable delay. They have come into the law not through the judicial process but through legislation. They represent a public policy about the privilege to litigate. Their shelter has never been regarded as what now is called a 'fundamental' right or what used to be called a 'natural' right of the individual. He may, of course, have the protection of the policy while it exists, but the history of pleas of limitation shows them to be good only by legislative grace and to be subject to a relatively large degree of legislative control." Id. 325 U. S. at 314.

We therefore hold, the legislature may revive a workers' compensation claim which would have been barred by a previous limitation period by enacting a new statute of limitation, without violating our constitutional prohibition against retroactive laws. Our ruling today is not in conflict with our recent decision in *Hart v. Owens-Illinois, Inc.*, 250 Ga. 397 (297 SE2d 462) (1982) because there the legislature did not intend the statute to have retrospective application to substantive matters, and a substantive matter was in issue before us in that case. Our decision in this case is

consistent with this court's general policy of construing the provisions of the Workers' Compensation Act liberally in order to afford the injured claimant a remedy. *Samuel v. Baitcher*, 247 Ga. 71, 73 (274 SE2d 327) (1981).

2. In their second enumeration of error appellants contend the Administrative Law Judge should have submitted this case to the Medical Board in accordance with OCGA § 34-9-311, because the evidence submitted at the hearing established a "medical controversy." The record contains medical reports from two pulmonary specialists. One doctor gave an unequivocal diagnosis of byssinosis. The other doctor reported that appellee's pulmonary impairment was related to his occupational exposure to cotton dust but lacked enough information to enable him to give a diagnosis of byssinosis. This presents no medical controversy to be submitted to the Medical Board.

Judgment affirmed. All the Justices concur, except Marshall, P.J., and Bell, J., who dissent.

APPENDIX D

SUPREME COURT OF GEORGIA

Atlanta, July 2, 1984

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

Canton Textile Mills, Inc., et al. v. Turner Lathem

It is ordered that this Court's judgment of June 12, 1984, be hereby amended to show that Hill, C. J., dissents.

It is further ordered that the motion for rehearing is hereby denied. Hill, C. J., Marshall, P. J., and Bell, J., dissent.

SUPREME COURT OF THE STATE OF GEORGIA,

CLERK'S OFFICE, ATLANTA,

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Hazel E. Hallford, Deputy Clerk